

**Shafter Floor Covering and Resilient Floor & Decorative Covering, Local Union No. 1247, affiliated with the International Brotherhood of Painters and Allied Trades, AFL-CIO. Case 31-CA-10075**

April 23, 1981

#### DECISION AND ORDER

Upon a charge filed on June 2, 1980, by Resilient Floor & Decorative Covering, Local Union No. 1247, affiliated with the International Brotherhood of Painters and Allied Trades, AFL-CIO, herein the Union, and duly served on Shafter Floor Covering, herein Respondent, the General Counsel of the National Labor Relations Board, herein the General Counsel, by the Regional Director for Region 31, issued a complaint on July 14, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5), (3), and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent to date has failed to file an answer to the complaint.

With respect to the alleged unfair labor practices, the complaint alleges that Respondent has violated and is violating Section 8(a)(5) of the Act by refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of Respondent's employees in the described appropriate unit, that Respondent has violated and is violating Section 8(a)(3) of the Act by discharging and refusing to reinstate Rex Kaufman and Kent Kaufman because of their protected concerted activities, and that by the above-described conduct Respondent did violate and is violating Section 8(a)(1) of the Act.

On January 29, 1981, the General Counsel filed directly with the Board a Motion for Summary Judgment based upon Respondent's failure to file an answer as required by Section 102.20 of the Board's Rules and Regulations, Series 8, as amended. Subsequently, on February 3, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has failed to file a response to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

#### Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing duly served on Respondent specifically states that unless an answer to the complaint is filed by Respondent within 10 days of service thereof "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." The complaint issued on July 14, 1980. According to the Motion for Summary Judgment, counsel for the General Counsel, on January 16, 1981, sought to advise Respondent by telephone that no answer to the complaint had been filed, but was unable to locate a telephone number for Respondent.

As noted, Respondent has not filed an answer to the complaint, nor did it file a response to the Notice To Show Cause and, therefore, the allegations of the General Counsel's Motion for Summary Judgment stand uncontroverted. No good cause to the contrary having been shown, in accordance with the rule set forth above, the allegations of the complaint are deemed to be admitted and are found to be true. Accordingly, we grant the Motion for Summary Judgment.

#### FINDINGS OF FACT

##### I. THE BUSINESS OF RESPONDENT

Respondent is now, and has been at all times material herein, a corporation duly organized under and existing by virtue of the laws of the State of California, with an office and principal place of business located in Shafter, California, where it is engaged in wholesale and retail sale and installation of floor coverings. The Kern County Floor Covering Association, herein called the Association, has been an organization composed of employers engaged in the sale and installation of floor cover-

ings, which exists for the purpose, *inter alia*, of representing its employer-members in negotiating and administering collective-bargaining agreements with labor organizations, including the Union. At all times material herein Respondent has been and is now an employer-member of the Association. The employer-members of the Association collectively in the course and conduct of their business operations annually purchase and receive goods or services valued in excess of \$50,000 from sellers or suppliers located within the State of California, which sellers or suppliers receive such goods in substantially the same form directly from outside the State of California.

We find, on the basis of the foregoing, that, by virtue of its membership in the Association, Respondent is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

## II. THE LABOR ORGANIZATION INVOLVED

Resilient Floor & Decorative Covering, Local Union No. 1247, affiliated with the International Brotherhood of Painters and Allied Trades, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

### A. The 8(a)(5) and (1) Violations

#### 1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

*Included:* All employees employed by the employer-members of the Association, including maintenance employees, who are required to use any of the recognized tools of trade covered by the Agreement.

*Excluded:* Salespersons, office clerical employees, guards and supervisors as defined in the Act.

#### 2. The representative status of the Union

Respondent, as an employer-member of the Association, is a party to a collective-bargaining agreement, effective for a term from October 1, 1979, to September 30, 1982. Since about 1972 a majority of Respondent's employees in the unit described above have designated or selected the Union as their representative for the purposes of collective bargaining with Respondent. At all times

since 1972, and continuing to date, the Union has been the exclusive representative for the purposes of collective bargaining of the employees in the unit described above and, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

#### 3. The request and refusal to bargain

Commencing on or about May 1, 1980, and continuing to date, the Union has requested, and is requesting, Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, as the exclusive collective-bargaining representative of all the employees of Respondent in the unit described above.

Commencing on or about May 1, 1980, and at all times thereafter, Respondent refused and continues to refuse to bargain collectively with the Union as the exclusive collective-bargaining representative of all the employees in the unit described above in that on or about May 1, 1980, it repudiated the existing collective-bargaining agreement between the Union and the multiemployer association of which it is a member, and since that date has failed and refused and continues to fail and refuse to abide by the agreement described above.

Accordingly, we find that Respondent, by the conduct described above, since May 1980, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

### B. The 8(a)(3) and (1) Violations

On or about May 1, 1980, Respondent discharged Rex Kaufman and Kent Kaufman, and since that date has failed and refused, and continues to fail and refuse, to reinstate them to their former positions of employment.

Respondent engaged in the conduct described immediately above because the above-named employees joined or assisted the Union or engaged in other protected concerted activities for the purposes of collective bargaining or other mutual aid or protection.

Accordingly, we find that, by its aforesaid conduct, Respondent discriminated in regard to the hire and tenure and terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and that by

such conduct Respondent engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

By all of the conduct described above, Respondent interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and accordingly we find that Respondent did thereby engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5), (3), and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We shall order Respondent to cease and desist from repudiating the collective-bargaining agreement and from refusing to bargain with the Union, and, upon request, to bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, to embody such understanding in a signed agreement.

We shall order that Respondent offer Rex Kaufman and Kent Kaufman immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and that they be made whole for any loss of pay suffered because of their unlawful discharge. The backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest computed as provided in *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>1</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

<sup>1</sup> Member Jenkins would compute interest in the manner set forth in his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

#### CONCLUSIONS OF LAW

1. Shafter Floor Covering is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Resilient Floor & Decorative Covering, Local Union No. 1247, affiliated with the International Brotherhood of Painters and Allied Trades, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following-described employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

*Included:* All employees employed by the employer-members of the Association, including maintenance employees, who are required to use any of the recognized tools of trade covered by the Agreement.

*Excluded:* Salespersons, office clerical employees, guards and supervisors as defined in the Act.

4. Since 1972, the above-named labor organization has been the exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By the acts described in section III, above, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, its employees in the exercise of rights guaranteed them in Section 7 of the Act and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5), (3), and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Shafter Floor Covering, Shafter, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Repudiating its collective-bargaining agreement with the Union and refusing to bargain collectively concerning rates of pay, wages, hours of employment, and other terms and conditions of employment, with Resilient Floor & Decorative Covering, Local Union No. 1247, affiliated with the International Brotherhood of Painters and Allied Trades, AFL-CIO, or any other union selected as

the exclusive bargaining representative of the employees in the following unit:

*Included:* All employees employed by the employer-members of the Association, including maintenance employees, who are required to use any of the recognized tools of trade covered by the Agreement.

*Excluded:* Salespersons, office clerical employees, guards and supervisors as defined in the Act.

(b) Discouraging its employees' membership in, or activities on behalf of, the above-named Union, or any other labor organization, by discriminatorily discharging and refusing to reinstate employees because they join or assist the Union or any other labor organization for the purpose of collective bargaining or engage in other protected concerted activity, or by discriminating in any other manner in regard to hiring or tenure or any other term or condition of employment.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of their Section 7 rights.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Offer to Rex Kaufman and Kent Kaufman immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights previously enjoyed, and make them whole for any loss of pay or other benefits suffered by reason of the interference, restraint, and coercion against each in the manner described above in the section entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Shafter, California, copies of the attached notice marked "Appendix."<sup>2</sup>

<sup>2</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Respondent shall mail copies of the notice to employees at their last known addresses and to the Union. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT repudiate our collective-bargaining agreement with the Union or otherwise refuse to bargain collectively concerning rates of pay, wages, hours of employment, and other terms and conditions of employment with Resilient Floor & Decorative Covering, Local Union No. 1247, affiliated with the International Brotherhood of Painters and Allied Trades, AFL-CIO, or any other union selected as the exclusive bargaining representative of our employees. The bargaining unit is:

*Included:* All employees employed by the employer-members of the Association, including maintenance employees, who are required to use any of the recognized tools of trade covered by the Agreement.

*Excluded:* Salespersons, office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT discourage our employees' membership in, or activities on behalf of, the above-named Union, or any other labor organization, by discriminatorily discharging and refusing to reinstate employees because they join or assist the Union or engage in other protected concerted activity for the purpose of collective bargaining or by discriminating in any other manner in regard to hiring or tenure or any other term or condition of employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their Section 7 rights.

WE WILL, upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the above-described unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL offer to discharged employees, Rex Kaufman and Kent Kaufman, who were discharged as a result of our discrimination

against them, immediate and full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings suffered by reason of the discrimination against them, plus interest.

All our employees are free to become, remain, or refrain from becoming or remaining, members of the above-named Union, or any other labor organization.

SHAFTER FLOOR COVERING